IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 15649 of 2007(K)

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PETITIONER:

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RAJEEVAN.B., AGED 26 YEARS,
S/O.LATE BHARATHAN.K., VEENACHERY HOUSE,
AJANUR P.O., KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS:

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1. JOINT REGISTRAR FOR CO-OPERATIVE SOCIETIES (GENERAL), KASARAGOD.

2. KOTTACHERRY CO-OPERATIVE MARKETING SOCIETY NO.L.354, KOTTACHERRY, KANHANGAD, KASARAGOD DISTRICT REPRESENTED BY ITS SECRETARY.

R1 BY GOVT. PLEADER SRI. P.K. RAVIKRISHNAN.
R2 BY ADV. SRI.SEBASTIAN DAVIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 15649/2007.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : THE TRUE COPY OF DEATH CERTIFICATE OF K. BHARATHAN, DATED 26.8.2004.

EXT. P2 : THE TRUE COPY OF THE SSLC CERTIFICATE OF THE PETITIONER.

EXT. P3 : THE TRUE COPY OF THE NOTICE DATED 26.6.2004.

EXT. P4 : THE TRUE COPY OF THE LEGAL HEIRSHIP CERTIFICATE DATED 1.9.2004 ISSUED BY TAHSILDAR, TALUK OFFICE, HOSDURG.

EXT. P5 : THE TRUE COPY OF THE ORDER NO.H.M.3073/2004 DATED 26.8.2004.

EXT. P6 : THE TRUE COPY OF THE REPRESENTATION DATED 6.7.2006.

EXT. P7 : THE TRUE COPY OF THE REMINDER DATED 10.1.2007.

**K.M.JOSEPH, J.**

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WP.(C) No. 15649 of 2007

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Dated this the 5th day of November, 2007

**JUDGMENT**

Father of the petitioner, who was employed by the second respondent as a lorry cleaner expired on 18.11.1991. Petitioner made an application seeking the benefit of dying-in-harness on 3.7.2001. The respondent Society sought permission of the Registrar to appoint the petitioner as lorry cleaner. The permission sought was granted as evidenced by Ext.P5. Petitioner has approached this court seeking direction to implement Ext.P5 and to appoint the petitioner to the post of lorry cleaner with immediate effect.

2. Counter affidavit is filed by the Society inter alia stating that petitioner had applied for appointment after a lapse of ten years. Petitioner was not eligible for appointment after a lapse of ten years. The Board of Directors on 5.3.2004 considered the application and sought permission from the first respondent. When permission was obtained, the Board of Directors again considered the matter of appointment to be given to the petitioner and by resolution dated

26.4.2005 decided not to make any appointments in the Society in view of the financial position of the Society. It is stated that the Society is now running at a net loss of Rs.1,19,75,613.29 due to the fall in the production and price of the commodities especially coconut and arecanut and the survival of the Society itself is doubtful. The Society is incurring heavy loss om every financial year and due to the financial crisis, even the existing employees could not be given the financial benefits, which are due to them. It is further stated that the Society is the owner of a lorry, which is 1984 model. The Society wants to sell it even before the year 2002 itself and sought the permission of the first respondent. The first respondent gave permission but subject to the condition that the vehicle should not be sold for less than Rs.80,000/-. But there are nobody to purchase the lorry above Rs.80,000/-. The sale of the lorry did not take place and the lorry is kept idle. It is further stated that the driver of the lorry retired on 30.6.2007 and the second respondent is not in a position to use the lorry profitably and the only option is to sell the lorry and therefore the second respondent is again approaching the first respondent to vary the conditions of sale of the

lorry by public auction. It is stated that in the above circumstances, no post of lorry cleaner is now available to be filled up with the second respondent.

3. I heard learned counsel for the petitioner and the learned counsel for the Society.

4. I would not think that the mandamus as sought for by the petitioner should be issued in the circumstances which are shown to exist in the counter affidavit. But I dispose of the writ petition directing that the claim of the petitioner will be considered by the respondent Society as and when circumstances exist when the Society can consider the application.

(K.M. JOSEPH, JUDGE)

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